**REPORTABLE**

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) NO. 37 OF 2007**

% **Date of Decision** : 19th April, 2007.

NITIN JAIN .... Appellant.
Through Mr. Naresh K. Thanai, Advocate.

VERSUS

ANUJ JAIN & ORS. .... Respondents.
Through Nemo

**CORAM:**

**HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE**
**HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

**SANJIV KHANNA, J:**

1. The appellant herein, Mr. Nitin Jain along with five others, who are the respondents 1-5 in the present Appeal had filed a suit No.946/2000 for partition and rendition of accounts against the

respondents 6-14. It was stated in the Suit that the appellant and the respondents herein belong to one family and are members of S.P. Jain (HUF). The members of the said HUF had also constituted smaller HUFs. Details of the properties owned by the said HUFs are mentioned in the annexure to the suit.

2. The appellant and the respondents herein filed IA No. 2592/2001 under Order XXIII, Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short) for compromise. Paragraphs 2, 3 and the prayer clause in the application are relevant and are reproduced below:-

> "2. That the parties are in relation to each other. The plaintiffs are children of the defendants no.2 to 5 and Nos.7 to 10, and the defendants No.2 to 5 are the sons of the defendants No.1 and 6. The parties are constituents of various bigger and smaller HUFs, viz S.P. Jain (HUF) and others.
> 3. That during the pendency of the present proceedings, the parties hereto have negotiated and arrived at a settlement. In pursuant to the settlement, parties distributed the moveable and immovable properties. The possession of respective portions have also been taken over by the parties. The properties stood orally partitioned. Parties so as to avoid any dispute in future have decided to incorporate the terms of settlement in

> the present application and the same are as follows:-
> I. Property No. H-32, Sainik Farm New Delhi
> (a) x x x x x x
> (b)x x x x x x
> (c)x x x x x x
> (d)x x x x x x
> II. E-7, Kalindi Colony, New Delhi
> x x x x x x
> III. 17.9% share in Tower-A of the premises constructed at Plot Nos.5 & 7, Serial No.82, Varsova, Mumbai
> x x x x x x
> IV. x x x x x x
> 4. In the facts and circumstances explained above it is most respectfully prayed that this Hon'ble Court may be pleased to decree the suit in terms of settlement detailed in preceding paras."

3. By Order dated 23rd April, 2001, the statements of the parties were recorded by the learned Single Judge and aforesaid application was allowed accepting the compromise. It was also recorded as under:-

> "The compromise is accepted and recorded. Decree, as prayed, in terms of the compromise, is granted. I.A. 2952/2001 and Annexures A and B thereto shall form part of the decree."

4. The Registry, however, did not prepare the decree-sheet on the

ground that the same can be drawn after valuation report of all the properties is placed on record and the stamp duty @ 1% under Article 45 of the Stamp Act is paid. Office note dated 4th May, 2002 to this affect was prepared.

5. The appellant filed an application being I.A. No. 13902/2006, which was dismissed vide the impugned Order dated 13th December, 2006 passed by the learned Single Judge. Learned Single Judge in the impugned Order has held that no family arrangement much less oral family agreement of partition was alleged and therefore the parties must comply with the office note of the Registry and only on payment of stamp duty the parties will be entitled to the decree-sheet.

6. A Partition Deed is an instrument of partition and has been defined in Section 2(15) of the Stamp Act. The said investment is chargeable to duty as per Schedule 1, Article 45 of the Stamp Act. Stamp duty payable on an instrument of partition is @ 1% of the value of the property. A decree of partition passed by a Court is also an instrument of partition as defined in Section 2(15) of the

Stamp Act, which reads as under:-

> **"2(15)**. "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any Civil Court and an award by an arbitrator directing a partition."

7. However, Courts have recognised oral partitions in cases of joint families. An oral partition is not an instrument of partition as contemplated under Section 2(15) of the Stamp Act. Therefore, as it is not an instrument, on an oral partition no stamp duty is payable.

8. The Courts have recognised that it is legally permissible to arrive at an oral family settlement dividing/partitioning the properties and thereafter record a memorandum in writing whereby the existing joint owners for the sake of prostriety record that the property has been already partitioned or divided. The memorandum does not by itself partition the properties but only records for information what has already been done by oral partition. The memorandum itself does not create or extinguish any rights. A record of oral partition in writing is created. The writing records a pre existing right

and does not by itself partition the properties for the first time. As the memorandum only records oral partition which has already taken place but does not in praesenti create any right, it cannot be treated as an instrument creating partition. [ Refer, ***Tek Bahadur Bhujil versus Debi Singh Bhujil and others*** reported in AIR 1966 SC 292), ***Bakhtawar Singh versus Gurdev Singh*** reported in (1996) 9 SCC 370, ***Kale versus Dy. Director of Consolidation*** reported in (1976) 3 SCC 119, ***Roshan Singh versus Zile Singh*** reported in AIR 1988 SC 881 and ***Bachan Singh versus Kartar Singh and others*** reported in 2001 (10) JT (SC) 64.]

9. In view of the legal position explained above, it follows that a decree of partition is an instrument of partition and therefore is required to be stamped under Schedule 1 of Article 45 r/w Section 2(15) of the Stamp Act. However, an oral family settlement dividing or partitioning the property is not required to be stamped. Similarly, a memorandum recording an oral family settlement which has already taken place is not an instrument dividing or agreeing to divide property and is therefore not required to be stamped.

10. Relevant paragraphs of the application for compromise and the orders passed by the Court have been quoted above. In the application it is specifically stated that the parties had entered into an oral family settlement and had distributed movable and immovable properties. In fact it is further stated that the parties had already been put in possession of the respective portions and the possession had been taken over. The compromise application merely records the oral family settlement to avoid any ambiguity. Therefore, in this case the Court was not required to pass any decree of partition but only declare the existing factual position on the date when the compromise application was filed, that the parties had entered into an oral family settlement and had partitioned and separated the properties amongst themselves. It was a decree of declaration that there exists an oral family settlement that was passed and no decree that amounts to an instrument of partition under Section 2(15) of the Stamp Act was passed. Thus, the objection raised by the Registry that the appellant and other co-owners must furnish valuation report and

pay stamp duty is not correct and legally tenable. However, it is clarified that in case the appellant or any of the co-sharers want to have a decree of partition prepared by the Registry, they shall have to file valuation report and also pay stamp duty.

11. One more clarification is required. Clause (a) to (c) of Section 17(1) of the Registration Act deals with the documents which require compulsory registration. A decree of partition requires registration under Section 17(1)(b) of the Registration Act. However, by virtue of Section 17(2)(vi), Clause (b) to Section 17(I) (b) would not apply to *"any decree or order of a Court except the decree or order expressed to be made on a compromise and comprising immovable properties other than that which is the subject matter of the suit or proceedings.*" [See, ***P.K. Nangia versus Land & Development Officer*** reported in AIR 1998 Delhi 260 (DB) and **Bhoop Singh versus Ram Singh Major** reported in (1995) 5 SCC 709].

12. With the above clarifications and observations, Order dated 13th December, 2006 passed by the learned Single Judge dismissing

I.A. No. 13092/2006 is set aside. Appeal is accordingly allowed.

In the facts and circumstances of the case, there will be no order as to costs.

**(SANJIV KHANNA)**
**JUDGE**

**(DR. MUKUNDAKAM SHARMA)**
**CHIEF JUSTICE**

**APRIL 19, 2007.**
**P/VKR**